FILED

IN THE

THE STATE OF WASHINGTON, on the Relation of REED & GOODWIN & FISHER, INCORPORATED, a Domestic Logging Corporation, Appellant,

vs.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY and HON. JOSEPH B. LINDSLEY, Judge Thereof,

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APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON.

STATEMENT AS TO JURISDICTION.

ELMER E. TODD,
FRANK H. HOLMAN,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 663

THE STATE OF WASHINGTON ON THE RELATION OF BOND & GOODWIN & TUCKER, INCORPORATED, A DISSOLVED DELAWARE CORPORATION, APPELLANT,

vs.

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SPOKANE COUNTY AND HON. JOSEPH B. LINDSLEY, JUDGE THEREOF.

STATEMENT AS TO JURISDICTION.

The appellant, in support of the judisdiction of the Supreme Court of the United States to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

The Act of February 13, 1925, ch. 229, Section 1, 43 Stat. 937 (U. S. C., Title 28, Sec. 344), provides that

Section 237 of the Judicial Code is amended to read in part as follows:

> "SECTION 237 (*a*). A final judgment or decree in any suite in the highest court of a state in which a decision in the suit can be had, * * * where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

B.

Statute of the State, the Validity of Which is Involved.

Section 3854 of Rem. Comp. Stats. of Washington (1922), being ch. 46, Laws of Washington (1909), p. 72, amending Section 3 of an Act approved March 28, 1890, Laws of Washington, 1889-1890, pages 288, 290, the validity of which is involved, reads as follows:

> "Such corporations (foreign corporations) shall also constitute and appoint an agent, who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence and the place where the principal business of such corporation is to be carried on, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or

transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded; and such corporation shall have and keep continually some resident agent, empowered as aforesaid during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporation. Such corporation may change its agent or its principal place of business, from time to time, by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in the principal place of business; and in the event such foreign corporation shall withdraw from this state and cease to transact business therein it shall continue to keep and maintain such agent within this state upon whom service of process, pleadings and papers may be made, until the statute of limitations shall have run against anyone bringing an action against said corporation, which accrued prior to its withdrawal from this state. In case said corporation shall revoke the authority of its designated agent after its withdrawal from this state and prior to the time when the statutes of limitations would have run against causes of action accruing against it, then in that event service of process, pleadings and papers in such actions may be made upon the secretary of state of the

state of Washington, and the same shall be held as due and sufficient service upon such corporation."

C.

The date of the judgment sought to be reviewed is December 2nd, 1932.

The application for appeal is presented on the 29th day of December, 1932.

D.

Nature of Case and Ruling Below.

The case is an original proceeding in the Supreme Court of the State of Washington on the application of Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, for a writ of prohibition restraining and enjoining the Superior Court of the State of Washington for Spokane County and the Hon. Joseph B. Lindsley, Judge thereof, from proceeding with the trial of a cause pending in said court wherein one W. A. Monroe is plaintiff and the said Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, and others, are defendants, as against said Bond & Goodwin & Tucker, Incorporated, and restraining and enjoining said Superior Court and said Judge from exercising any jurisdiction in said cause over said Bond & Goodwin & Tucker, Incorporated. Said application was based upon the following grounds:

(1) That the provisions of Section 3854 of Remington's Compiled Statutes of Washington (1922), under which service of summons and complaint upon the said

Bond & Goodwin & Tucker, Incorporated, was attempted by leaving one copy of the summons and complaint in the office of the Secretary of State, deprive the said Bond & Goodwin & Tucker, Incorporated, of its property without due process of law in violation of the provisions of Clause 1 of the Fourteenth Amendment to the Constitution of the United States and are therefore unconstitutional and void, and the said purported service of process is null and void and of no effect and the said Superior Court for Spokane County has acquired no jurisdiction over the person of the said Bond & Goodwin & Tucker, Incorporated, by reason thereof, in that the particular provisions of said Section 3854 regarding service upon a foreign corporation, where such corporation has withdrawn from the State, do not require the Secretary of State or the plaintiff in the action to give said corporation any notice of such service or any copy of the complaint or summons, or in any other way to give such corporation any notice or information as to the nature and character of the action so as to enable such corporation to make a defense thereto. (Affidavit and Application for Writ of Prohibition, par. VIII.)

(2) That said provisions of said Section 3854, Remington's Compiled Statutes of Washington (1922) deny to the said Bond & Goodwin & Tucker, Incorporated, the equal protection of the laws, in violation of Clause 1 of the Fourteenth Amendment to the Constitution of the United States in that said provisions of said section wrongfully discriminate against a foreign corporation like the said Bond & Goodwin &

Tucker, Incorporated, in that said provisions are less favorable than the similar provisions regarding service contained in Section 227 Remington's Compiled Statutes of Washington (1922) as to service on domestic corporations where no officer or agent of such corporation can be found in the State; and said provisions also wrongfully discriminate against a foreign corporation like the said Bond & Goodwin & Tucker, Incorporated, in that they are less favorable than the similar provisions of Section 7044 Remington's Compiled Statutes of Washington (1922) regarding service on foreign insurance companies (Affidavit and Application for Writ of Prohibition, par. IX).

(3) That if the alleged service was in fact made on Mr. Kitto, the Assistant Secretary of State, as the return of service on file shows, the service is void under the statute, Section 3854, and also void because in conflict with Clause 1 of the Fourteenth Amendment to the Constitution of the United States, as aforesaid (Affidavit and Application for Writ of Prohibition, par. X).

The Supreme Court of the State of Washington sustained the validity of said provisions of said Section 3854 of Remington's Compiled Statutes of Washington (1922) and sustained said attempted service of process as valid and effective to vest jurisdiction over the person of the said Bond & Goodwin & Tucker, Incorporated, a dissolved Delaware corporation, in the said Superior Court of the State of Washington for Spokane County and denied the writ of prohibition

applied for (Opinions of Court: October 13, 1932; December 2, 1932). Said Supreme Court is the highest court of the said State of Washington in which a decision in the suit can be had.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of the Supreme Court of the United States are believed to sustain jurisdiction of this appeal, to wit:

1. As to Section 3854 of Remington's Compiled Statutes of Washington (1922), depriving appellant of its property without due process of law:

Wuchter v. *Pizzutti*, 276 U. S. 13.

Consolidated Flour Mills Co. v. *Muegge*, 278 U. S. 559 (reversing *per curiam*, *Consolidated Flour Mills* v. *Muegge*, 127 Okla. 295).

2. As to Section 3854 of Remington's Compiled Statutes of Washington (1922) denying to appellant equal protection of the laws:

Kentucky Finance Corporation v. *Paramount Auto Exchange Corp.*, 262 U. S. 544.

Power Mfg. Co. v. *Saunders*, 274 U. S. 490.

3. As to service of process on an *Assistant* Secretary of State, depriving appellant of property without due process of law:

Amy v. *City of Watertown*, 130 U. S. 301.

Riverside & D. R. Cotton Mills v. *Menefee*, 237 U. S. 189.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 237 of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C., Title 28, Section 344).

Respectfully submitted,

ELMER E. TODD,
FRANK E. HOLMAN,
Counsel for Appellant.